

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|------------------------|---|--------------------------------|
| GREGORY SHANE KINNARD, | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 4:09-CV-01349 |
| | : | |
| WARDEN DEROSE | : | |
| Defendants. | : | |

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On July 14, 2009, plaintiff, Gregory Shane Kinnard, proceeding pro se, filed a complaint. On November 10, 2009, this court ordered Kinnard to file an amended complaint after screening the complaint pursuant to 28 U.S.C. §1915A. (Rec. Doc. No. 13). Kinnard filed an amended complaint on November 24, 2009. (Rec. Doc. No. 15). The complaint named Warden DeRose as the defendant. On May 24, 2010, DeRose filed a Motion to Dismiss the complaint. (Rec. Doc. No. 24). The motion was fully briefed by both parties and was referred to Magistrate Judge Carlson for preparation of a report and recommendation on the motion to dismiss. Judge Carlson filed a twelve-page report and recommendation recommending that the motion to dismiss be granted and the case closed. Objections to the report and recommendation were due January 27, 2011. Plaintiff did not file any objections. Thus, the matter is ripe for disposition.

Because we agree with the magistrate judge's thorough analysis that the action should be dismissed, and because plaintiff has not filed any objections, we will

adopt the magistrate judge's report and recommendation in its entirety. We find that Kinnard failed to state a claim for relief because civil rights liability may not be based solely upon *respondeat superior*, and because inmates do not have a constitutional right to a prison grievance system. Moreover, we agree with the magistrate judge the Kinnard was given the opportunity to amend his complaint and giving further leave to amend would not be fruitful. We will not rehash the sound reasoning of the magistrate judge.

Accordingly this 23rd day of February, 2011, it is ordered that:

1. United States Magistrate Judge Martin C. Carlson's Report and Recommendation is adopted in full. (Rec. Doc. No. 35.)
2. Defendants' Motion to Dismiss is GRANTED. (Rec. Doc. No. 24).
3. The complaint is DISMISSED
4. The clerk is directed to close the case file.

/s/William W. Caldwell
William W. Caldwell
United States District Judge